

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

TRACY ANTHONY MILLER,

Plaintiff

VS.

Warden ALEXIS CHASE, *et al.*,

Defendants

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NO. 5:09-cv-352 (CAR)

ORDER

Plaintiff **TRACY A. MILLER**, presently an inmate at Augusta State Medical Prison (“ASMP”) in Augusta, Georgia, has filed a Motion to Set Aside Judgment, in which he asks this Court to reconsider its order dated October 7, 2009. The Court’s October 7th order dismissed plaintiff’s complaint because plaintiff, while incarcerated, had three prisoner actions dismissed by United States Courts pursuant to 28 U.S.C. § 1915(g), and plaintiff is not currently under imminent danger of serious physical injury.

Plaintiff’s grounds for reconsideration include that: (1) he filed this lawsuit under the Americans with Disability Act and Rehabilitation Act, and not under section 1983 (despite plaintiff having filed this lawsuit on this Court’s section 1983 forms); (2) he is in imminent danger because he was confined at MSP as recently as February 2008; and (3) this lawsuit should be treated as a “refiling” of a 2005 lawsuit plaintiff filed in this Court (*Miller v. Meadows*, 5:05-cv-29 (CAR)).

With respect to plaintiff’s first argument, the three strikes rule of section 1915(g) applies to all civil actions and thus to the Americans with Disability Act and Rehabilitation Act as well as section 1983. With respect to plaintiff’s second argument, the fact that he was confined at MSP as recently as February 2008 does not support his currently being in imminent danger of serious

physical injury as a result of conditions at MSP. Finally, there is simply no basis for treating the present lawsuit as a refiling of plaintiff's 2005 lawsuit, in which final judgment was entered on November 5, 2007.

Plaintiff is advised that if he believes he is in imminent danger of serious physical injury as a result of conditions at ASMP, he should file a lawsuit in the **Southern District of Georgia**, where ASMP is located, not this district.

SO ORDERED, this 4th day of November, 2009.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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